

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In re LIPITOR ANTITRUST LITIGATION

MDL No. 2332
No. 12-2389 (PGS/DEA)

MEMORANDUM AND ORDER

This matter is before the Court on a motion to stay pending Supreme Court review in *In re K-Dur Antitrust Litigation* (ECF No. 152). For the following reasons, the motion is denied.

1. The Court adopts and incorporates the reasons set forth in its Memorandum and Order denying a motion to stay during the pendency of motions to dismiss (ECF No. 197).

2. To date, the Supreme Court has not taken any action with regard to in *In re K-Dur Antitrust Litigation*, 686 F. 3d 197 (3d Cir. 2012). Even if certiorari is granted in the future, the stay will exceed a year before the Supreme Court decides the case. If a year delay occurs, it will prejudice the plaintiffs by preventing any discovery from moving forward. On the other hand, there is little prejudice to defendants. Assuming the Supreme Court hears the matter, it will occur during the discovery phase of this litigation, and the case can adjusted to incorporate the Supreme Court's ruling before trial.

3. As such, a stay is an extraordinary remedy that should be used only sparingly. As one court stated:

[A]ll federal litigation proceeds in light of the possibility that the Supreme Court, some day, may issue a future decision which might affect the outcome. However, if this Court were to stay all federal cases in which relevant issues, that have already been decided by this Court based on settled Supreme Court precedents, may arise in cases in which the Court has granted certiorari, we would have a needless backlog of cases when it is not even clear if the future decisions will affect the outcome of the pending cases.

Moeller v. Bradford County, 2007 U.S. Dist. LEXIS 7965 * 11 (M.D. Pa. Feb. 5, 2007). The same is applicable here — it is unclear whether or when the Supreme Court will hear the case, and it is too speculative to decide how a Supreme Court decision will effect the outcome of this case.

4. To date, the defendants have filed two motions to stay discovery and have made several applications to delay the filing of a motion to dismiss. Although the requests may have been reasonable, the litigation and discovery should move forward. Since Magistrate Judge Arpert will oversee discovery, discovery will not be over burdensome on defendants, and it will be conducted on a step-by-step basis to prevent any prejudice or undue expense. As such, a stay of the proceedings or discovery is denied.

ORDER

For the reasons set forth above;

IT IS on this 19th day of October, 2012

ORDERED that the motion to stay proceedings pending a Supreme Court decision in *In re K-Dur Antitrust Litigation* (ECF No. 152) is denied.

s/Peter G. Sheridan
PETER G. SHERIDAN, U.S.D.J.